

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Thomas Darby;) C/A No. 5:06-0434-CMC-BM
Plaintiff,)
v.) **OPINION and ORDER**
City of Orangeburg,)
Defendant.)

)

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, the complaint filed by Plaintiff, who is proceeding *pro se*, was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation. On February 21, 2006, the Magistrate Judge issued a Report and the matter is now before the court for a ruling.

This court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Based on his review of the record, the Magistrate Judge has recommended that the complaint be dismissed without prejudice and without issuance of service of process because Plaintiff fails to state a claim on which relief can be granted. The Magistrate Judge advised Plaintiff of the

procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff has filed no objections to the Report and Recommendation and the time for doing so has expired.¹

After reviewing the Complaint, the record, and the Report and Recommendation of the Magistrate Judge, the court agrees with the recommendation of the Magistrate Judge. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted and incorporated by reference.

IT IS HEREBY ORDERED that this action is **DISMISSED** *without prejudice and without service of process.*

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
March 27, 2006

C:\temp\notesB0AA3C\06-434 Darby v. City of Orangeburg - dis wo prej and svc - dmb - fails to state a claim.wpd

¹Plaintiff did file an unlabelled document on February 28, 2006, but the document is non-responsive to the Report and Recommendation.